

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

INSTITUTO DE EDUCACION UNIVERSAL,)	
Plaintiff,)	
)	
v.)	CIVIL NO. 98-2225 (RLA)
)	
UNITED STATES DEPARTMENT OF EDUCATION,)	
Defendant.)	

**DEFENDANTS' MOTION TO
VACATE MARCH 2 ORDER AS MOOT, CLOSE THIS CASE, AND
STRIKE THIS CASE FROM THE COURT'S DOCKET**

TO THIS HONORABLE COURT:

COME NOW, the Defendants, the Department of Education and its Secretary, who respectfully STATE and PRAY through undersigned counsel:

1. This Court resolved all outstanding merits issues in this case when it entered Final Judgment for the Defendants on October 26, 2004 (doc. #70). The sixty-day period of time to appeal that Final Judgment expired on December 25, 2004. See Fed. R. App. P. 4(a)(1)(B).
2. The remaining plaintiff in this case, IEU, has been represented by able legal Counsel throughout the appeal period and remains represented by legal Counsel today. See Order entered Nov. 5, 2004 (doc. #72); Omnibus Order entered Dec. 8, 2004 (doc. #79); Order entered Mar. 2, 2005 (doc. #81).
3. Despite being represented by Counsel, IEU has declined to file a notice of appeal from the Court's Final Judgment. The appeal period has now long expired, and it is far too late for this Court to extend IEU's time to appeal. See Fed. R. App. P. 4(a)(5)(A)(i) (District Court may extend time to file notice of appeal if extension request is filed no more than 30 days after appeal period ends, i.e., January 24, 2005). The Court likewise cannot reopen the time to file an appeal because IEU clearly received timely notice of the Court's Final Judgment. See Fed. R. App. P. 4(a)(6)(B); see also Motion Requesting Leave to Withdraw as Legal Representatives at 1 ¶ 1, filed Nov. 5, 2004 (doc. #71) (statement by ICU's Counsel that Counsel informed IEU of entry of the October 26 judgment against it); Injunctive Relief Petition at 1 ¶ 1, filed Nov. 8, 2004 (doc. #73) (document filed by Mr. Ruiz-Rivera acknowledging October 26 final judgment).

4. Because all merits issues were resolved by this Court's October 26 Final Judgment and IEU can no longer appeal that judgment, no legal issues remain alive (or can be revived) in this case. For these reasons, the case should be closed and stricken from the Court's docket.
5. Likewise, as this Court explained in its December 8, 2004 order, Mr. Angel Ruiz-Rivera is no longer a party to this case because his personal claims expired over four years ago while the Court's 1999 Final Judgment was on appeal to the First Circuit (Appeal No. 99-1628). See Omnibus Order at 1 n.2, entered Dec. 2, 2004 (doc. #79). By letter to the First Circuit dated September 3, 1999 (filed Oct. 4, 1999), Mr. Ruiz-Rivera withdrew his own appeal from this Court's 1999 judgment against him, thereby allowing the appeal to proceed with IEU as the sole appellant. See letter attached to this motion. Accordingly, although the First Circuit ultimately remanded IEU's claims to this Court (claims now resolved by the October 26, 2004 Final Judgment), see IEU v. U.S. Dept. of Education, 209 F.3d 18 (Apr. 12, 2000), Mr. Ruiz-Rivera's personal claims died in 1999 while on appeal. Mr. Ruiz-Rivera's apparent belief that he may revisit these long moribund pro se claims is misplaced.
6. Because IEU can no longer appeal or otherwise revisit this Court's Final Judgment and no merits issues remain for adjudication, Mr. Ruiz-Rivera's request for additional time to secure new counsel for IEU has become moot. In other words, there simply is nothing left for IEU's current or new legal Counsel to do in this case. The Court's March 2, 2005 order granting Mr. Ruiz-Rivera additional time to obtain new counsel for IEU therefore should be vacated as moot and the case should be closed and stricken from the docket.

WHEREFORE, the Department of Education and its Secretary respectfully request that this Honorable Court (1) vacate its March 2 order as moot, (2) close the case, and (3) strike the case from the Court's docket.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and will send copy by regular mail to Instituto Educación Universal, c/o Angel Ruiz Rivera, PO Box 191209, San Juan, Puerto Rico 00919-1209.

At San Juan, Puerto Rico, March 14, 2005.

H.S. GARCIA
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